

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6491

BILL NUMBER: HB 1007

NOTE PREPARED: Feb 4, 2013

BILL AMENDED: Jan 28, 2013

SUBJECT: Use Tax Nexus and Collection.

FIRST AUTHOR: Rep. Dermody

FIRST SPONSOR: Sen. Mishler

BILL STATUS: As Passed House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill specifies that using a location owned by a common carrier acting in its capacity as a common carrier is not considered using or maintaining a location in Indiana for purposes of determining whether a retail merchant is engaged in business in Indiana.

The bill provides that for purposes of the Indiana Sales and Use Tax law, a "retail merchant engaged in business in Indiana" includes any retail merchant who: (1) makes retail transactions in which a person acquires personal property or taxable services for use, storage, or consumption in Indiana; and (2) enters into an arrangement with any person, other than a common carrier, to facilitate the retail merchant's delivery of property to customers in Indiana by allowing customers to pick up property sold by the retail merchant at a place of business maintained by the person in Indiana.

The bill specifies that a retail merchant may be required by the state to collect and remit Sales or Use Taxes if any person conducts activities in Indiana on behalf of the retail merchant that are significantly associated with the retail merchant's ability to establish and maintain a market in Indiana. It provides that a retail merchant is presumed to be engaged in business in Indiana if an affiliate of the retail merchant has substantial nexus in Indiana and certain additional conditions are satisfied.

The bill also provides that a retail merchant is presumed to be engaged in business in Indiana if the retail merchant enters into an agreement with one or more residents of Indiana under which the resident directly or indirectly refers potential customers to the retail merchant, if the cumulative gross receipts from the sales by the retail merchant to customers in Indiana who are referred to the retail merchant by all residents is greater than \$10,000 during the preceding 12 months. It permits the presumptions to be rebutted.

The bill specifies that the Use Tax nexus provisions apply to transactions that occur after June 30, 2013.

Effective Date: July 1, 2013.

Explanation of State Expenditures: *Department of State Revenue (DOR)* - This bill will result in an increase in administrative costs for the DOR by requiring the DOR to revise Sales Tax forms to incorporate the provisions of this bill. It is estimated that the provisions of this bill can be implemented within the DOR's existing level of resources.

Explanation of State Revenues: *Impact on Sales Tax Revenue* - This bill expands the definition of who qualifies as a retail merchant. The definition would require certain electronic commerce (e-commerce) entities to collect and remit Sales Taxes. This bill would result in increased Sales Tax revenue. The amount of the increase would depend on the extent to which the definition change influences the location decision of a business entity or its affiliates.

Current statute requires that an individual pay Use Tax on out-of-state (including internet) transactions on the individual's income tax return. In FY 2012, approximately \$1.8 M in Use Taxes on out-of-state purchases was collected on individual income tax returns.

Background Information - A study conducted by the Indiana Fiscal Policy Institute and the Ball State University Center for Business and Economic Research examined how much revenue Indiana would lose in 2012 as a result of the absence of a Sales Tax on e-commerce transactions. The estimated revenue loss ranged from \$39.6 M to \$114.3 M. A University of Tennessee study estimated Indiana's e-commerce-related Sales and Use Tax revenue losses to be \$195.3 M to \$216.9 M in 2012.

Additionally, the Indiana Fiscal Policy Institute and Ball State University study examined the effect of taxing sales of out-of-state e-commerce entities on the entities' location decisions and found no statistically significant relationship.

In FY 2012, state Sales Tax revenue was approximately \$6.6 B. Sales Tax revenue is deposited in the state General Fund (99.848%), the Commuter Rail Service Fund (0.123%), and the Industrial Rail Service Fund (0.029%).

Explanation of Local Expenditures:

Explanation of Local Revenues: Local revenues will increase to the extent that a local unit receives distributions from the Commuter Rail Service Fund or the Industrial Rail Service Fund.

State Agencies Affected: Department of State Revenue.

Local Agencies Affected:

Information Sources: *Indiana Handbook of Taxes, Revenues, and Appropriations, FY 2012. State and Local Government Sales Tax Revenue Losses from Electronic Commerce*, University of Tennessee, April 2009. *To Collect Sales Tax or Not: Indiana's E-Commerce Conundrum*, Indiana Fiscal Policy Institute, November 2011.

Fiscal Analyst: Lauren Sewell, 317-232-9586.